

## **CHAPTER 47-10 REAL PROPERTY TRANSFERS**

**47-10-01. Method of transfer.** An estate in real property, other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law or by an instrument in writing, subscribed by the party disposing of the same or by the party's agent thereunto authorized by writing. This does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof.

**47-10-02. Sale of realty - Duty of seller.** An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property.

**47-10-03. Agreement to give usual covenants on sale - Duty imposed.** An agreement on the part of a seller of real property to give the usual covenants binds the seller to insert in the grant covenants of seizin, quiet enjoyment, further assurance, general warranty, and against encumbrances.

**47-10-04. Form of covenants.** The covenants mentioned in section 47-10-03 must be in substance as follows:

The party of the first part covenants with the party of the second part that the former now is seized in fee simple of the property granted, that the latter shall enjoy the same without any lawful disturbance, that the same is free from all encumbrances, that the party of the first part and all persons acquiring any interest in the same through or for the party of the first part on demand will execute and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that reasonably may be required, and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same.

**47-10-05. Grants - Execution - Witnesses sufficient - Seal unnecessary.** The execution of a grant of an estate in real property to entitle the same to be recorded, if it is not acknowledged, must be proved by a subscribing witness or as otherwise provided in sections 47-19-23 and 47-19-24. The absence of the seal of any grantor or grantor's agent from any grant of an estate made in real property shall not invalidate or in any manner impair the same.

**47-10-05.1. Presumption of corporate authority of officers - Application.** An officer of any foreign or domestic corporation, or a manager of any foreign or domestic limited liability company, is presumed to have the power and authority to execute and acknowledge, in its behalf, any instrument granting, conveying, or otherwise affecting any interest in or lien upon any property of the corporation or limited liability company, including contracts, mortgages, deeds, plats, replats, easements, rights of way, options, dedications, restrictions, releases, and satisfactions. Any such instrument executed by an officer of the corporation or limited liability company prior to July 1, 1983, and otherwise proper, is valid and effective.

**47-10-06. Form of grant.** A grant of an estate in real property may be made in substance as follows:

This grant made the \_\_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_, between A.B., of \_\_\_\_\_, of the first part, and C.D., of \_\_\_\_\_, of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part in consideration of \_\_\_\_\_ dollars, now received, all the real property situated in \_\_\_\_\_, and bounded (or described) as follows:

\_\_\_\_\_  
Witness the hand of the party of the first part.

A.B.

**47-10-07. Deed - Execution - Post-office and street address of grantee a prerequisite.** Each deed executed in which real estate is described shall contain the post-office address, and any known or existing street address if within the corporate boundaries of a city, of each grantee named in such deed.

**47-10-08. Grant conclusive against whom.** Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under the grantor, except a purchaser or encumbrancer who in good faith and for a valuable consideration acquires a title or lien by an instrument that first is duly recorded.

**47-10-09. Grant valid pro tanto.** A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than the owner could transfer lawfully, does not work a forfeiture of the owner's estate but passes to the grantee all the estate which the grantor could lawfully transfer.

**47-10-10. Title to highway, street, alley, and public right of way - Vacation.** A transfer of land bounded by a highway, street, alley, or public right of way passes the title of the person whose estate is transferred to the soil of the highway, street, alley, or public right of way in front to the center thereof unless a different intent appears from the grant. Every conveyance of real estate, which abuts upon a vacated highway, street, alley, or other public right of way, shall be construed, unless a contrary intent appears, to include that part of such highway, street, alley, or public right of way which attaches either by operation or presumption of law, to such abutting real estate upon such vacation.

**47-10-11. Easements - Pass by transfer of property to which attached.** A transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property obviously and permanently was used by the person whose estate is transferred, for the benefit thereof, at the time when the transfer was agreed upon or completed.

**47-10-12. Warranties - Lineal and collateral abolished - Exceptions.** Lineal and collateral warranties with all their incidents are abolished but the heirs and devisees of any person who has made any covenant or agreement in reference to the title of, in, or to any real property are answerable upon such covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law.

**47-10-13. Grant presumes fee simple title.** A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended.

**47-10-14. Grant takes effect on performance of condition.** An instrument purporting to be a grant of real property to take effect upon a condition precedent passes the estate upon the performance of the condition.

**47-10-15. After-acquired title.** When a person purports by proper instrument to grant real property in fee simple and subsequently acquires any title or claim of title thereto, the same passes by operation of law to the grantee or the grantee's successors.

**47-10-16. Reconveyance when estate defeated by nonperformance of condition subsequent.** When a grant is made upon condition subsequent and subsequently is defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or the grantor's successors by grant duly acknowledged for record.

**47-10-17. Encumbrances defined.** The term encumbrances includes taxes, assessments, and all liens upon real property.

**47-10-18. Liability of grantor.** Whoever conveys real estate by deed or mortgage containing a covenant that it is free from all encumbrances, when an encumbrance appears of record to exist thereon, whether known or unknown to that person, shall be liable in an action of contract, to the grantee and the grantee's heirs, executors, administrators, successors, grantees, or assigns for all damages sustained in removing the same.

**47-10-19. Covenants implied from use of word grant.** From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed, the following covenants, and none other, on the part of the grantor for the grantor and the grantor's heirs to the grantee and the grantee's heirs and assigns, are implied unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance, the grantor has not conveyed the same estate, nor any right, title, or interest therein, to any person other than the grantee; and
2. That such estate, at the time of the execution of such conveyance, is free from encumbrances done, made, or suffered by the grantor, or any person claiming under the grantor. Such covenants may be sued upon in the same manner as if they had been inserted expressly in the conveyance.

**47-10-20. Attornment - When unnecessary.** Grants of rents, reversions, or remainders are good and effectual without attornments of the tenants, but no tenant, who before notice of the grant shall have paid rent to the grantor, must suffer any damage thereby.

**47-10-21. Reservation of coal limited to description.** Repealed by S.L. 1979, ch. 187, § 108.

**47-10-22. Reservation without description ineffectual.** Repealed by S.L. 1979, ch. 187, § 108.

**47-10-23. Transfer by grantor to the grantor and another in joint tenancy.** Any person, firm, corporation, or limited liability company owning a legal or equitable title to or interest in any real property in the state of North Dakota may sell, transfer, and convey the same as grantor to the grantor and any other person, firm, corporation, or limited liability company, including the spouse of said grantor, in joint tenancy, with right of survivorship, without the necessity of any transfer or conveyance to or through any third person.

**47-10-23.1. Nontestamentary transfer between spouses - Presumption.** A nontestamentary transfer of real property between spouses shall be presumed to be for a consideration, and not a gift, unless otherwise stated in writing at the time of transfer. This presumption is conclusive.

**47-10-24. Description and definition of minerals in leases and conveyances.** All conveyances of mineral rights or royalties in real property in this state, excluding leases, shall be construed to grant or convey to the grantee thereof all minerals of any nature whatsoever except those minerals specifically excluded by name in the deed, grant, or conveyance, and their compounds and byproducts, but shall not be construed to grant or convey to the grantee any interest in any gravel, clay, or scoria unless specifically included by name in the deed, grant, or conveyance.

No lease of mineral rights in this state shall be construed as passing any interest to any minerals except those minerals specifically included and set forth by name in the lease. For the purposes of this paragraph the naming of either a specific metalliferous element, or nonmetalliferous element, and if so stated in lease, shall be deemed to include all of its compounds and byproducts, and in the case of oil and gas, all associated hydrocarbons produced in a liquid or gaseous form so named shall be deemed to be included in the mineral named. The use of the words "all other minerals" or similar words of an all-inclusive nature in

any lease shall not be construed as leasing any minerals except those minerals specifically named in the lease and their compounds and byproducts.

**47-10-25. Meaning of minerals in deed, grant, or conveyance of title to real property.** In all deeds, grants, or conveyances of the title to the surface of real property executed on or after July 1, 1983, in which all or any portion of the minerals are reserved or excepted and thereby effectively precluded from being transferred with the surface, all minerals, of any nature whatsoever, shall be construed to be reserved or excepted except those minerals specifically excluded by name in the deed, grant, or conveyance and their compounds and byproducts. Gravel, clay, and scoria shall be transferred with the surface estate unless specifically reserved by name in the deed, grant, or conveyance.